

ORIGINAL

1 GREGORY G. KATSAS
Acting Assistant Attorney General

2 JOSEPH P. RUSSONIELLO (CA Bar No. 44332)
3 United States Attorney
4 JOANN M. SWANSON (CA Bar No. 88143)
Chief, Civil Division
5 SARA WINSLOW (DC Bar No. 457643)
Assistant United States Attorney
6 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-6925
7 Facsimile: (415) 436-6748
sara.winslow@usdoj.gov

8 JOYCE R. BRANDA
9 POLLY A. DAMMANN
SARA MCLEAN
10 U.S. Department of Justice
P.O. Box 261
11 Ben Franklin Station
Washington, D.C. 20044
12 Telephone: (202) 307-0475

13 Attorneys for the United States of America

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 UNITED STATES *ex rel.* DONNA M.)
MCLEAN *et al.*,)
18 Plaintiffs,)
19 v.)
20 THE COUNTY OF SANTA CLARA, *et al.*,)
21 Defendants.)
22
23

No. C 05-01962 HRL

UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION;
~~PROPOSED~~ ORDER

~~FILED UNDER SEAL~~

24 Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United
25 States notifies the Court of its decision not to intervene in the February 8, 2008 "Amendment
26 to Complaint" filed by Relator Donna McLean.

27 Although the United States declines to intervene, it respectfully refers the Court to
28 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the

1 United States; providing, however, that the "action may be dismissed only if the court and the
 2 Attorney General give written consent to the dismissal and their reasons for consenting." Id.
 3 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this
 4 language, the United States only has the right to a hearing when it objects to a settlement or
 5 dismissal of the action. U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir.
 6 1995); U.S. ex rel. Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

7 Therefore, the United States requests that, should either Relator or Defendants
 8 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
 9 United States with notice and an opportunity to be heard before ruling or granting its approval.

10 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
 11 pleadings filed in this action continue to be served upon the United States. The United States
 12 also requests that orders issued by the Court continue to be served on the Government's
 13 counsel. The United States reserves its rights to order any deposition transcripts and to
 14 intervene in this action, for good cause, at a later date. See 31 U.S.C. § 3730(c)(3).

15 Finally, the United States requests that the Court unseal Relator's Amendment to
 16 Complaint and this Notice of Election to Decline Intervention, with (proposed) Order lifting
 17 the seal. The United States also requests that all other sealed contents of the Court's file in
 18 this matter (including, but not limited to, any applications filed by the United States for
 19 extensions of the sixty-day investigative period, any applications for partial lifting of the seal,
 20 and any orders previously entered under seal in this matter) remain under seal and not be made
 21 public or served upon Defendants.


22 Respectfully submitted,

23 GREGORY G. KATSAS
 24 Acting Assistant Attorney General

25 JOSEPH P. RUSSONIELLO
 26 United States Attorney

27 Dated: June 26, 2008

By:


 SARA WINSLOW
 Assistant United States Attorney
 Attorneys for the United States

~~PROPOSED~~ ORDER

The United States having declined to intervene in Relator's Amendment to Complaint pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

IT IS ORDERED that:

THIS COURT'S APRIL 30, 2008 ORDER (DOCKET #158)

1. The Amendment to Complaint, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. Any applications and/or declarations that have been filed under seal by the United States for an extension of the sixty-day investigative period or for any other reason shall remain under seal and not be made public or served upon Defendants.

3. The parties shall continue to serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C.

§ 3730(c)(3). THE COURT, WITHOUT LIMITING THE STATUS AND RIGHTS OF THE PERSON INITIATING THE ACTION, MAY PERMIT THE GOVERNMENT TO intervene in this action, for good cause, at any time.

4. All orders of this Court shall be served on the United States.

5. Should Relator or Defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 7/1/08

HOWARD R. LLOYD
United States Magistrate Judge

CERTIFICATE OF SERVICE

I, TINA LOUIE, declare:

That I am a citizen of the United States and employed in the City and County of San Francisco, California; that my business address is United States Attorney's Office, 450 Golden Gate Avenue, 9th Floor, San Francisco, California 94102; that I am over the age of eighteen years; and that I am not a party of the above-entitled action;

That on June 26, 2008 I deposited in the United States mails, in an envelope bearing the requisite postage, a copy of:

United States' Notice of Election to Decline Intervention: [Proposed] Order

Filed Under Seal

addressed to:

Julia Clayton, Esq.
State Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

William C. Dresser
4 North 2nd Street, Suite 1230
San Jose, CA 95113-1307

at these last known addresses at which place there is service by United States mail.

This Certificate is executed on June 26, 2008, at San Francisco, California.

I certify under penalty of perjury that the foregoing is true and correct.


TINA LOUIE
Legal Assistant